

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TRIUMFO, INC.)	
)	
and)	
)	
INTERNATIONAL BROTHERHOOD OF)	Case 28-CA-222740
TEAMSTERS, LOCAL 631, affiliated with)	
the INTERNATIONAL BROTHERHOOD)	
OF TEAMSTERS)	
)	
)	
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)	

**RESPONDENT’S SUPPORTING BRIEF TO ITS EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE’S DECISION**

I. STATEMENT OF THE CASE

Triumfo, Inc. (“Respondent”) files the following Brief In Support to its Exceptions to Administrative Law Mara-Louise Anzalone’s (the “ALJ”) Decision based on errors contained in the Decision as set forth below.

II. PROCEDURAL HISTORY

This case involves a Charge filed by the International Brotherhood of Teamsters, Local 631, affiliated with the International Brotherhood of Teamsters (the “Union”), on June 25 and October 3, 2018, alleging that Respondent violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the “Act”) by, *inter alia*, unlawfully modifying the 2017 master Union contract by failing to pay contractually mandated contributions to the Union’s Health and Welfare Fund, Pension Fund, Vacation Fund, and the Teamsters Convention Industry Training Fund and failing to hire from the exclusive hiring hall. In addition, the Union alleged Respondent unlawfully interrogated employees and gave the impression that it was surveilling employees. A telephonic hearing was held on February 5-7, 22 and 27, 2019, in Las Vegas, Nevada.

Respondent filed a Post-Hearing Brief in this matter on April 3, 2019. The ALJ issued her Decision on January 17, 2020.

III. EXCEPTIONS

A. Exception 1 - The ALJ Incorrectly Found That Respondent Unilaterally Modified The Contract By Subcontracting Work

The ALJ incorrectly characterized Respondent's subcontracting work as a unilateral modification of the master Collective Bargaining Agreement 2017-2021 (the "Agreement"). Article 6, Section C(5)(a), of the Agreement specifically permits Respondent to subcontract work so long as the subcontractor observes the applicable wage rates, hours and working conditions set forth in the Agreement. To the extent that Respondent subcontracted work, it complied with this provision of the Agreement. Subcontracting does not include work performed by other trades. There was no evidence adduced at Hearing that Respondent failed to pay the wages set forth in the Agreement. As such, any subcontracting did not amount to a unilateral modification of the Agreement.

B. Exception 2 - The ALJ Incorrectly Found That Respondent Failed To Assert A Sound Arguable Basis For Its Failure To Adhere To Its Contractual Obligations

The ALJ was incorrect in finding that Respondent did not have an arguable basis for its failure to follow contractual obligations. To the extent that any impermissible subcontracting was done, it was a result of the Union violating its obligations under the Agreement to send quality employees who were able to do the work. By the Union continually failing to meet its obligations, Respondent was privileged to act in accordance with the subcontracting provision contained in the Agreement.

C. Exception 3 – The ALJ Incorrectly Determined Credibility Issues

The ALJ made numerous credibility determinations that are highly suspect and go against the preponderance of all the relevant evidence. While generally an ALJ's credibility determinations will not be reversed, the Board has reversed an ALJ's credibility determinations where they were incorrect and without proper support in the record. *See, Harry Lunstead Designs*, 270 NLRB 1163 (1984).

To the extent she found, the ALJ erred in finding that there was credible evidence that Respondent's employees at its warehouse were engaged in bargaining work covered by the Agreement.

D. Exception 4 - The ALJ Incorrectly Determined That The Union Was Entitled To Information Regarding Non-Bargaining Unit Work Being Completed at Respondent's Warehouse

The ALJ incorrectly concluded that the Union was entitled to information regarding non-unit employees performing work for Respondent at its warehouse facility. The request by the Union was generic and contained multiple references to unknown entities such as "Eye Catchers" and "rollover forms and Bullpen forms." Respondent's warehouse information has nothing to do with the work covered by the Agreement. As such, the ALJ erred in finding that the Union is entitled to information regarding work conducted in Respondent's warehouse.

E. Exception 5- The ALJ Erred To The Extent She Attempted To Expand The Unit Of Work

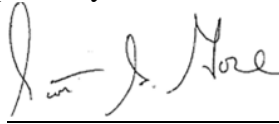
The only work at issue in the Charge and before the ALJ was the work performed at the various convention halls in Las Vegas. Any work performed at the warehouse referenced in the Union's information request is outside the scope of the Agreement. Any issue related to the scope of the Agreement should be deferred under *Collyer* and *Dubo Mfg.*, 142 NLRB 431 (1963). Under *Dubo*, the proper course of action would have been to defer the processing of the

unfair labor practice issue, “where the matter in dispute in that case is being processed through the grievance-arbitration machinery and there is a reasonable chance that the use of that machinery will resolve the dispute or set it at rest.” *See* Memorandum GC 15-02, Procedures for Application of the Dubo Policy to Pending Charges, dated May 14, 1979. There was simply no basis in the record for the ALJ to determine the unit issues. Accordingly, Respondent asks that the entire matter be deferred to the parties’ arbitration process so that an arbitrator may rule on the issue.

IV. CONCLUSION

For the foregoing reasons, the Respondent requests that the Board grant its Exceptions to the ALJ’s Decision and have the Charge be dismissed in its entirety.

Respectfully submitted,

By: 

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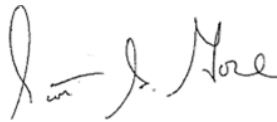
CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached **Respondent's Supporting Brief To Its Exceptions To the Administrative Law Judge's Decision** was served on March 6, 2020, by E-Filing via the NLRB Portal.

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